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NO. 84-1440

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

ALWIN E. HOPFMANN, GREGORY HESSION, CLARENCE PERKINS, CLARENCE PAULIN, and BETH SULLIVAN,

Appellants,

v.

MICHAEL JOSEPH CONNOLLY, FRANCIS X. BELLOTTI, CHESTER G. ATKINS and THE DEMOCRATIC STATE COMMITTEE OF MASSACHUSETTS,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Appendix, Vol.3, Supplementary

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"UNREFORMING THE PARTIES" BY J. PATRICK DOBEL and RONALD R. STOCKTON

Published in COMMONSENSE, Summer, 1979

Something is clearly wrong with our political system. The symptoms of malfunction are obvious; individual participation has dropped precipitously; factionalism has increased and wields greater impact; political debate has shifted from substantive issues to issues of symbolism or of ad hoc self-interest; individuals move from oblivion to the centers of power with astonishing and disturbing ease; fewer citizens than ever before identify with political parties; faith in public institutions declines in a rapid spiral.

While many factors contribute to these tendencies, a fundamental political problem is that political parties are not performing their functions. Without working parties, social cohesion and the ties of one individual to another break down as do the linkages of individuals to political structures. The political effectiveness of the system, particularly its ability to mediate conflict and arrive at a workable consensus, is also considerably impaired.

We believe much of the decline of the party as an effective institution can be traced to certain changes and "reforms" made in recent years. After discussing the functions of the parties and the consequences of their disruption, we will propose several not-too-modest "unreforms" to revivify the parties.

Functions of Parties

It is intriguing that in many countries where there is no organized opposition and no system of free elections, the government nevertheless finds it desirable to maintain political parties and to hold periodic elections. In American society, we think of elections as primarily serving to select between policy alternatives but, in fact, selection of policy alternatives is only one of several functions performed by an election campaign. On a long range basis, the others are more important.

First, elections and parties develop linkages between the individual and the political system. During the course of a campaign, voters become familiar with the structures of government, the issues, the individuals who head the structures, and the fact that these leaders are, at least

on a limited basis, subject to public scrutiny and influence. Leaders in turn are forced to stand before the public as servants. Practical political knowledge increases; efficacy, both personal and political, spreads beyond the elite classes to the ranks of the poor and the economically disenfranchised to make political accountability possible. Conflict is channeled into manageable forms rather than violence.

Second, elections and parties generate social cohesion which links individual to individual and group to group. During a campaign, people who might ordinarily not mix are brought together in common activities and goals. The atomization and isolation inherent in all modern societies are overcome or inhibited.

Third, parties and elections forge policy consensus. Different groups are

obligated out of necessity to cooperate and compromise. Group leaders and individuals must confront different ideas and try to understand alternative points of view. If it does nothing else, a campaign forces people and groups who ordinarily hate each other to bite their tongues and pose together with smiles for public photographs.

Fourth, parties and elections force individuals to see their problems and interests in a society-wide framework. While appeals are always made to particularist concerns, leaders try to link together the concerns of diverse groups and show the common thread of community, however imperfectly defined. Thus a key by-product of campaigns is the creation of ideology, which reinforces social cohesion, creates a workable policy consensus,

and builds individual trust in the political system.

Last, and perhaps most importantly, participation in the parties is one of the few ways the poor and workers have gained any control over their destinies and been brought into the system. For in politics, intensity of commitment and numbers of people combined with party organization can be more important than wealth. With these tools, the poor, workers, and minorities have been able to use parties to augment their influence. In many countries, the normal pattern of higher participation by the affluent and educated is offset by workers' participation in parties at a far higher rate than one would expect. It is not by chance that many of the great ethnic groups in America first gained power and recognition in the arena of politics where "machines," votes,

and loyalty mattered more than wealth and education. The parties have been one of the country's most important devices for encouraging upward social mobility, bringing hidden grievances onto the political agenda, and avoiding the dangers of protracted class war.

The Weakening of Parties and the Transfer of Political Power

It is commonly acknowledged that the predominance of the electronic media in campaigns has injured the parties severely, but a confluence of other political reforms also have struck at party roots. The constant move toward merit and civil service appointments at all levels of government eliminates the few remaining sources of political patronage. The extension of primaries eliminates the screening and socializing functions of the party and makes conventions irrelevant to nomination, in spite of the fact that it

is in conventions where a workable consensus can be forged and candidate responsibility ensured. Restrictions in the Hatch Act dovetail with the limitation upon patronage to deprive parties and the political system of the participation of one of the most politically active parts of the population. The distribution of federal and state election funds, while generally desirable, shifts the focus from parties and grassroots politics to independent entrepreneurial candidates. Convention rules which devalue prior party participation encourage the intervention of non-committed groups to capture the proceedings for limited ideological reasons and further reduce incentives for active participation in parties.

The most obvious consequence of the decline of parties has been the radical decline in political participation. At

the present time the majority of people under 30 have no reliable party identification. During the last decade, an estimated 15 million American citizens, many of them formerly regular voters, stopped voting. Turnout in presidential elections has dropped, by one estimate from 64 percent in 1960 to 54 percent in 1976. As substantive political participation has declined, alienation, distrust, and withdrawal, especially in the disenfranchised groups, has significantly increased.

It is all too easy to blame this significant decline upon "citizen apathy," but we contend that the people have not failed politics but that politics has failed the people. Citizens do not participate because there is little reason to particiapte, and because their participation is not wanted. The new system emphasizes the efficiency of

election mobilization. It ignores individual participation as inefficient, and depersonalizes citizens into a mass, manipulatable by the media. Simply put, this means the elimination of parties as they have historically functioned. It means parties without politics and politics without parties.

Without parties, public campaigns do not address the real concerns of lift. They provide spectacle and drama but do not encourage people to work for candidates or to think about public issues, nor do they extend a sense of personal worth or efficacy to the citizenry. On the other hand, without politics, parties are reduced to irrelevant bureaucracies or labels which can be captured by personal factions and used for their own ends.

The separation of politics from parties has consequently resulted in a

transfer of power from the working classes to elites. The party once needed and utilized the resources of the working classes - intensity of commitment, local concern, and people-power. Canvassing, organizing grassroots campaigns, and getting out the vote all required large numbers of organized people tied into a party structure. The party's strength in people-power gave it a base of operation and gave the people a base in the party. These are no longer needed. The weakening of the parties has been a windfall for a new brand of technocrat political mercenaries and the politicians who can afford them. A plethora of survey research, marketing, advertising and direct mail firms has created a growth industry around aspiring politicians. Increasingly candidates with enough money, regardless of

previous experience or commitment, can-capture a primary and an election by the use of money and merchandising skill. the "outsider" or "independent" becomes the norm in American politics - a situation encouraged by the reliance upon primaries where the media most effectively mobilizes people. The emphasis upon ad hoc mobilization for limited electoral purposes reduces the non-elites to electoral pawns in the game of media mobilization and effectively closes them out from sustained influence via their importance in organized parties. In response, the poor, workers, and lower middle classes reduce their participation. The dominant new electorate is then fairly small, well-educated, and "sophisticated." Basically, it shares in the advantages of a prosperous, special-interest-oriented status quo.

The nature of a new political style also calls into being a new type of politician who is either independently wealthy or almost singularly dependent upon those who are. To gain access to media one must have money. To the outside candidate, running without the backing of party structures, this means a personal fortune, access to a personal fortune (perhaps that of some ideological sugar daddy), funding from some large interest or ideological group, or a computerized direct mailing to selected lists of people scientifically chosen because of their tested propensity to contribute to issues or candidates of their liking.

The above approaches all by-pass parties, continuous political organizations, and people-power in favor of direct money. But a non-party candidate can move

from a money/media strategy to a caricature of the people-power strategy, by a reliance on a "kiddie corps" approach. The essence of this strategy, as perfected by Eugene McCarthy and George McGovern, is to lead an inspired cadre of activists - whom James Q. Wilson calls "purists" - committed to a number of clear and important policy differences at variance with the status quo. The strategy relies, in spite of disclaimers by such candidates, on a cult of personality. Issues alone do not inspire tireless armies of volunteers. The campaign depends upon a single-issue or some limited ideological positions and an image of the candidate as an anti-politician (read: non-compromiser; read: ineffective politician). While this strategy seems people-oriented it is not, for it relies on an ad hoc mobilization, not continuous organization; furthermore,

the amateurs likely to dominate such a campaign are usually young, upper middle class, well-educated, and ideologically committed. They are notorious for their inability to mobilize the working classes or even deal effectively with regular activists. Their commitment is often unstable and easily withdrawn when the candidate tries to play a political role with groups whose viewpoint is different from that of his activists supporters. As George McGovern discovered, when he tried to make peace with party regulars, the accusation that one is "just a politician" can have a devastating impact on such an ad hoc organization.

Furthermore, partyless politics handle political conflicts in a particularly dangerous and ineffective manner. The new activists demand a clear and rigid commitment on the part of the candidate,

whether it be to the special interest of an economic or idealogical group or to the specific demands of the kiddie corps, the mass mailin clientele or the sugar daddy. A candidate's flexibility, bargaining power, and autonomy are decreased; political consensus becomes extremely difficult to obtain when politicians cannot negotiate and interest groups are content to settle for vetoes rather than positive agreements. The traditional party provided mobilized support under an umbrella of common issues and structural identify and give the political leader negotiating autonomy. No such shelter exists today.

Without an on-going organization to turn out large numbers of voters, the candidate may be forced to rely on narrowly targeted media appeals to temporarily mobilize a limited body of otherwise lethargic people. This mobilization must

be based inevitably upon candidate personality and ad hoc issues. The link between the politician and the public thus shifts from the party to the coterie, a small, closed group of dedicated people whose prime loyalty is to one person.

The coterie is fundamentally different from the party is replaces. To start with, the members of the coterie derive their influence from their relationship to the candidate and from their personal loyalty. The party leaders, in contrast, have an independent power base and are more loyal to the organization or issues than to the candidate. Secondly, the coterie only serves the candidate: it raises money, handles the media, services interest groups and runs the technologies of campaigning. Unlike the party, it need give little consideration to the public

good, party discipline, or effective political compromise.

Although coteries have always been in politics, they have not been the primary form of organization. In the past, they were forced to come to terms with the party and its agenda. Their loyalty to the candidate was moderated by the practical need for party support. Today such restraints are minimal. Consequently, the closed nature of coteries in a non-party world makes them far more vulnerable to decision making distorted by in-group loyalty: Carter, Kennedy and Nixon have all suffered from this problem and the dangers inherent in it.

This new form of campaign organization frustrates the purpose of politics. The new breed of candidate can win an election, but cannot cultivate

long range compliance or support from the electorate. Given their limits, legislatures seldom address important issues, and when they act, the results are rife with interest group exceptions. No public consensus develops because there is little discussion of issues in the campaign. The party for its part is incapable of gaining a disciplined consensus among its members. The hard political choices are left to discretionary bureaucracies or to the courts.

The emergence of partyless politics has led to great declines in traditional participation and to the emergence of two alternative patterns of neo-participation. In the first pattern, rigid single-interest groups coalesce committed individuals around burning issues for periods of time. These groups have no concern with parties

or candidates but only with issue positions. These specific interest groups can raid the parties and capture them for their own ends much like candidates can capture party labels for their own purposes. They have little use for compromise or consensus and frustrate the party's ability to generate either.

In the second pattern, citizens frustrated by inaction turn to the ballot box for a means of accountability presently denied them. The marked preference for plebiscitary initiatives all over the country stems from the impotence of the parties and their failure to mediate between the people and government or to develop any consensus on issues. The plebiscites also reflect he new pattern of financing in politics. Most referenda rely on kiddie corps on a well-financed,

often hidden support and exclusive media manipulation.

Unreforming the Parties

Our proposals are designed to shift the patterns of citizen participation to more substantive modes and ensure that this participation occurs largely within party structures. We would accomplish this by redeploying incentives to provide more satisfaction, influence, and concrete economic reward for actual party participation. We want more people working, wearing buttons, putting posters in their yards, talking, thinking, and committing themselves. The trends toward coterie organization, media demogogues, irresponsible politics, lack of legislative discipline, and increasing elite dominance of the political system can only be fought with more participation and stronger parties.

The proposals encompass three areas: primaries and conventions, the civil service merit system, and the expenditure patterns of candidates. Although the proposals center on the federal level, their analogues apply at the state and local levels.

First, all party decisions relating to policy and candidates should be made by conventions at which no more than one-half of all delegates are chosen by primaries. This rule would apply at both federal and state levels and would mean that delegates to the national nominating conventions would be chosen by state conventions rather than by direct vote of the public. We feel strongly that primaries should be used to send a message to the conventions and not to make decisions. This proposal recognizes the role of primaries as a

check on bossism yet avoids the dangers inherent in an unlimited primary.

Second, a modified spoils system should be introduced. All policy-making positions should continue serving at the behest of the administration in power. In non-policy civil service grades, however, 5-10 percent of all new federal appointments which open as a consequence of retirement or new funding should be filled on the basis of demonstrated civil service competence and the political recommendations of the party. These positions would be allocated to state party commissions on the basis of the parties' performances in the last presidential election. Seventy percent of the positions would go to the party which carried the state and 30 percent would go to the losing party. Additionally the Hatch Act should be

repealed or modified to allow government employees full participatory rights.*

*(Ed.Note) Lest the Democratic authorship of the article be in doubt, this proposal is one on which most Republicans, in the past, have disagreed with the authors, while not wholly dissenting from the notion that a patronage system does have its virtues. As this issue went to press, the entire subject was somewhat clouded by a ruling from the U.S. District Court in Chicago, that political patronage represents an unconstitutional deprivation of equal protection and due process of the law. Shakman, et al. v. Democratic Organization of Cook County, Civil No. 69C2145 (1979)

Third, the pattern of television candidacies should be changed. Television has an enormous capacity to inform, but likewise, it has an enormous capacity to manipulate. Reliance on media advertising tends to distort a campaign by shifting the focus from grassroots organization and coalition building to fundraising and mass manipulation. We have two proposals: free air time and standardized format.

Recalling that the public owns the airways and that networks use them free of charge, television stations should be required to provide a fixed amount of free and prime air time to bona fide parties and candidates. A bona find party would be one which met a minimum vote total in the previous election (perhaps 10 percent); a bona fide candidate (in a primary) would be one who can present qualifying petitions signed by an agreed upon percentage

of the electorate. The percentage figure should be low enough to be achievable but high enough to require an organizational effort rather than a simple coterie candidacy.

The rules for the use of this television time could be flexible but should follow certain principles: first, a candidate accepting free time should be discouraged from purchasing additional time. Second, certain prime times should be designated for the showing of political information programs and no other programming could be presented during these times on any stations. Third, use of short duration advertising - image blitz - the slick thirty-second "spot" -should be minimized. All candidate or party information programs should last a minimum of 10 minutes and must focus on a candidate or a

party leader presenting issue positions.

Critics will point out that these proposals discriminate against third parties. Indeed they do, but then so does the whole single-member plurality electoral system. If the nation shifted to a proportional representation electoral plan (a shift we would oppose), we would consider adjusting our proposals accordingly. Meanwhile, false concern for minor parties must not be allowed to destroy the only viable parties we have.

The most immediate impact of these proposals would be to strengthen the parties and give them an independent power base by drawing more people into their ranks. The shift of decisionmaking back to caucuses and conventions will give party membership and party activity more purpose and responsibility. Interested

individuals will gravitate to the power center (the party organization) and will gain far more influence and satisfaction in dealing with live candidates, real issues, and real people than is provided by a world of media candidates and primaries. The incentives will be strengthened by the fat that conventions will be serious business and participation in them will be tied to party participation and loyalty.

In addition,since government servants in other countries manifest more political efficacy, interest, and inclination to act in the political process than most of the population, our assumption is that the parties will benefit the most from their reentry into the political arena.

Most importantly, the concrete awards of patronage and direct influence will draw more disenfranchised groups into the

parties and the political process. "Frozen out of many opportunities like immigrants of the past, the present poor and minorities are denied patronage as a way of building machines and political gain. Civil service reform was tainted with a strong desire to undermine the influence which the poor and ethnics gained through patronage. The system needs more messy participation, especially from people who have neither the trust nor the political efficacy to lead them to naturally participate. Even with mixed motives, as in the case of patronage-inspired work, political participation increases people's sense of efficacy, personal esteem, and trust in the political order. It also unleashes new creative energies and changes the political agenda to a more human scale of neighborhoods and real-life needs.

Shifting the balance back to a caucus and reintroducing spoils takes account of the fact that real-life politics is a human activity. Political work requires time and energy. Most of us do not have or only occasionally have the fervor to spend long hours for an ideal or crusade. But we usually can care if there are possibilities of real human satisfactions from working with people, having responsibility, influencing and meeting candidates, and going to conventions. It might even mean a job for oneself or people we care about.

New decision power and the resources of new people and patronage will give the party its own bargaining chips to counteract the sources of economic or ideological political wealth. The self-interest of candidates will lead them back to work with the parties: first, the party will

be the focus of critical decisions for their own continued career; second, politicians will need the patronage and have to meet with the state party apparatus to gain access; third, the party can once again provide an independent haven to support its own political integrity against the specific and rigid demands of single-interest groups; fourth, with limits upon media expenditures, candidates will not be able to ride a media-coteria route to office and will need party resources; fifth, candidates will work with the party in election years since all state politicians gain from the success of the party through the patronage pool.

The reestablishment of a working relationship between politicians and their parties will make party loyalty an issue for the politician. The party's new

negotiating position would give it some small chance of reintroducing some responsibility and discipline into its own ranks. Confronting real people in smoke-filled rooms and conventions is far more efficacious for political accountability than making television commercials. Candidate training would be more complete: they would learn bargaining, communication, and compromise skills, and party structure would gradually generate new candidacies from its own ranks. Coteries would be less closed since candidates could no longer hide behind television screens; more hard bargaining would take place and coteries would be more open and co-optative.

Our proposals will not end the paralysis of American politics or create a new consensus, but they will help strengthen the one set of institutions

which can accomplish both. Unreforming the parties will draw more people, especially the disenfranchised and powerless, into substantive politics. This will give the parties a more substantial independent base from which to build consensus on issues, generate skilled politicians, and discipline recalcitrant demogogues. Only parties can get political discussion back on the street where it belongs and take it out of the hands of semi-mesmerized people watching thirty-second commercials as unrelated to real life as White Tornadoes in the kitchen or the Man from Glad.

FROM THE AGREED UPON LEGISLATIVE HISTORY

FROM THE COURT BELOW

"DEMOCRATIC COMMISSION DRAFTS PARTY CHARTER" BY JEROME MILEUR

Ed McColgan, a former state legislator and unsuccessful candidate for Congress in 1976, told the Massachusetts Democratic Charter Commission last fall that there is "almost no real Democratic Party organization in this state at the local level." In his bid for Congress, McColgan said, only 14 of the 88 Democratic town and city committees in the First District gave any financial help, and only about ten others even "took the time to meet and endorse me." "You court ward and town committees," he added, "because you

have to, but in almost all cases they're an insignificant factor."

McColgan's lament became a familiar refrain to the 25 members of the Charter Commission, which was created last September by then-state party chairman Charles Flaherty after being mandated by vote of the party's 1977 state issues convention. The Commission began its work in October by holding seven public hearings attended by several hundred Democrats across the Commonwealth. Several themes ran through the testimony it hears: the organizational decay of the party at its grass roots, the weakness of the state committee, and the absence of party discipline and accountability.

In November, when the Commission turned to the actual drafting of a charter, there was general agrteement among its members that significant changes would

have to be made in party structure if the desires of rank-and-file Democrats for a stronger party were to be realized. The Commission unveiled its work in late March, and the draft charter now being circulated to Democratic town, ward and city committees does indeed call for major changes in current party structure.

The proposed charter restores the state convention, which was abolished in 1972 by a Democrat-controlled state legislature. In fact, the charter calls for two kinds of state conventions -- an issues convention in odd-numbered years to adopt a party agenda, and an endorsing convention to pick candidtes for statewide (Constitutional and U.S. Senate) offices in even-numbered years when any are to be filled. Many local Democrats attributed the deterioration of town and ward commit-

tees to the elimination of state conventions; and former House Speaker, David Barrley, at a recent state party gathering in Northampton, called the vote to repeal the convention, taken during his tenure as Speaker, a "mistake."

The draft charter also changes the way in which conventions are organized and operate. Delegates are to be allocated to towns and cities on the basis of "one-Democrat, one-vote" formula, and are to be chosen at local party caucuses open to all enrolled Democrats and not just to members of local party committees. Resolutions for issues conventions are to be developed through processes beginning at local caucuses, and are to be adopted by majority vote of the convention. Convention endorsements are also to be made by majority vote, but any candidate receiving at least 20 percent of the vote on any ballot

for a particular office would be permitted to challenge the convention endorsement in the state primary.

Several major changes are proposed for the party's state committee, which was a target of frequent criticism from town and ward Democrats, Reflecting recommendations from local Democrats, the charter provides for the election of state committee members by direct vote of town and ward committee members, rather than at presidential primaries, and for shortening state committee terms from four to two years. The first links the state committee organizationally to local party committees, and the second affords the latter frequent opportunity to hold their state committee members accountable to local interests and concerns.

The proposed charter also spells out the duties and responsibilities of the

state committee. It gives the committee responsibility for conducting the party's state campaigns, filling vacancies in party nominations for statewide or congressional office, formulating and disseminating statements of party policy, and raising and disbursing monies needed to operate the party. It furthermore directs the state committee to set standards for local committee by-laws, to maintain regular communication and provide training and other services for local committees, and to monitor local committees and elected officials of the party to assure support for candidates and policies of the party.

The draft charter, in addition, enlarges the size of the state committee from its present 90 members to approximately 300, a change intended to broaden and diversify participation in party

affairs at the state level. The great majority of state committee members, 250 of the total, are to be elected by members of local party committees, with the remainder being ex-officio (Democratic constitutional officers, state legislative leaders, members of Congress and of the national committee) and affirmative action members. The charter also requires that the state committee meet at least six times a year, and that individual state committee members meet at least twice annually with town, ward and city committees within their districts.

The Commission has struggled with the question of what the district should be from which to elect state committee members. At present, they are chosen from state senate districts, and the Commission initially agreed to continue this practice. It subsequently reconsidered that

decision, flirted briefly with counties as the unit from which to elect state committee members, and settled finally on congressional districts. The problem has been to find a unit that is simultaneously fair to all elements in the party -- geographic and other -- and workable. It is a problem to which the Commission will no doubt return.

The proposed charter makes several changes in the election and organization of local party committees. Town and ward committee members will continue to be elected at presidential primaries for four-year terms, but slate voting is eliminated and instead candidates for local committee positions will file as individuals. Officers of local committees will be elected every two years, rather than every four as is now the case, and local committees will be required to meet

at least six times a year. these changes, like those in the state committee, reflect recommendations made repeatedly during the Commission's fall hearings.

Another recommendation advanced frequently by rank-and-file Democrats was that the Commission authorize local committees to remove so-called "dead wood" (inactive members) and to discipline those who supported candidates of another party. In this regard, the draft charter provides that state and local committee members may be removed through procedures guaranteeing due process and requiring majority vote of committee members for the following reasons: failure to attend half of the regularly scheduled committee meetings in a calendar year, public opposition to a

nominee of the party or public support for another party or candidate thereof, unauthorized use of the party name or resources, or conviction after appeals are exhausted of a criminal offense other than a misdemeanor.

The proposed charter does a number of other things as well. It establishes a five-member state judicial council responsible for compliance of state and local committees with the charter and for adjudicating disputes arising from it or between party committees at any level. It mandates a program of affirmative action and outreach designed to encourage full participation in party affairs at all levels by all segments of the population. Finally, it requires the state committee to adopt codes of ethical conduct and fair ampaign practices for all party members and candidates, requires party meetings at

all levels to be open to the public, and eliminates secret and proxy voting.

A Worcester Democrat told the Commission last fall, "People who are Democrats have the right to expect that they'll have something to say about what their party and its officials do." The proposed party charter is designed to give rank-and-file Democrats that right. The charter has now gone to Democratic town, ward and city committees for their reactions, after which the Commission will make revisions as seem appropriate. The Commission's final draft will be submitted for ratification to a state charter convention presently planned for next September. It will be an opportunity for Democrats in Massachusetts to move toward the strong and responsible party so many desire. It may be the last such opportunity for some time to come.

FROM THE AGREED UPON STATEMENT OF FACTS IN THE DISTRICT COURT

As Incorporated from the Agreed Upon Statement in Langone:

1970 Convention

28. The State Democratic Party held a pre-primary convention on June 12, 1970.

29. The delegates to the 1970 State Democratic convention were selected in accordance with G.L. c. 53 Secs. 54-54D, as then appearing, and the conduct of the convention and the qualifications of candidates to appear on the primary ballot were governed exclusively by the existing state statutory scheme.

1972 Convention

30. The State Democratic Party held a

pre-primary convention on June 10, 1972.

31. The delegates to the 1972 State Democratic convention were selected in accordance with G.L. c. Secs. 54-54D, as then appearing, and the conduct of the convention and the qualifications of candidates to appear on the primary ballot were governed exclusively by the existing state statutory scheme.

32. There were no pre-primary or endorsing conventions conducted by the State Democratic Party between 1972 and 1982.

1979 CHARTER CONVENTION

33. Pursuant to a vote of the Democratic State Committee, the Chairman, Charles F. Flaherty, in February, 1977,

appointed a Charter Commission to draft a proposed charter for the State Democratic Party.

34. The Charter Commission of the Massachusetts Democratic Party submitted a proposed charter which provided in pertinent part in Article Six, Section III, that:

ENDORSING CONVENTION

There shall be a State Convention in even-numbered years for the purpose of endorsing candidates for statewide offices in those years in which such office is to be filled. Endorsements for statewide office of enrolled Democrats nominated at the Convention shall be by majority vote of the delegates present and voting, with the provision that any nominee who recieves at least 20 percent of the Convention vote on any ballot for a particular office may challenge the convention endorsement in a State Primary Election.

34A The documents which are attached hereto as Attachments 7A through 7D are true copies of documents which are attached hereto as Attachments [legislative history documents included in this appendix] are true copies of documents which were available to the Charter Commission during its deliberations.

35. The delegates at the 1979 Charter convention were elected at caucuses on March 24, 1979, conducted in each ward and town in the Commonwealth. Approximately, 30,000 individuals participated in the caucuses.

36. Any and all registered democrats

could take part in the caucuses which elected the delegates to the 1979 Charter Convention. Registration was determined by official city or town records. There was no requirement establishing the length of time and individual had to have been enrolled in the Democratic Party prior to taking part in the caucuses which elected delegates to the 1979 Charter Convention.

37. A convention of the State Democratic Party was held on May 19, 1979 for the purpose of adopting a Charter for the State Democratic Party.

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39. On May 19, 1979, a notice was distributed to all delegates attending the 1979 Charter Convention. A true copy of

that notice is attached hereto and incorporated herein as Attachment No. 8.["Important Notice" legislative history document included in this appendix]

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42. Defendant Michael J. Connolly, as a Democrat holding the position of Secretary of the Commonwealth, was and is a member of the Democratic State Committee. As a member of the Democratic State committee, he attended the Charter Convention as a voting delegate...

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44. During the November 17, 1979 continuation of the Charter Convention an amendment was adopted to amend Article Six, Section III, by substituting "15%"

in place of "20%".

45. The question of whether legislation would be necessary to implement the 15% requirement imposed by Article Six, Section III of the Charter was discussed by the Convention delegates and was unresolved.

46. The provisions of Article Six, Section III, as they currently read, were adopted at the November continuance of the Charter Convention.

1982 CONVENTION

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58. If allowed, Chester G. Atkins, the Chairman of the Democratic State Committee would testify that he stated at said meeting his opinon that the case of

Democratic Party of U.S. v. Wisconsin, 450 U.S. 107 1981), could make Article Six, Section III and the "15 percent rule" contained therein effective without legislation.

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61. Delegates to the 1982 Endorsing convention were elected at caucuses conducted in each ward and town of the commonwealth on february 6, 1982. The primary notice of the 1982 Democratic caucuses given to registered Democrats was by newspaper announcements run at least once in every daily or weekly newspaper throuyhout the the Commonwealth. Notices were also sent to affirmative action organizatons throughout the Commonwealth.

62. Any and all registered democrats could take part in the February 6, 1982 caucuses. To take part in the February 6, 1982 caucuses an individual had toahve been enrolled in the Democratic Paty on or before December 31, 1981, as determined by official city or town records.

63. Approximately 100,000 individuals participated in the caucuses held on February 6, 1982.

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97. Since 1972, no Democrat who has obtained the nomination of the Democratic Party at a state primary for a statewide elective office, has lost in the general election.

Legislative History, Att.8, refered to in

39 above:

DEMOCRATIC STATE COMMITTEE Chet Atkins, Chairman, 14 Beacon Street*Suite 719*Boston*Massachusetts 02108*(617) 367 4760

IMPORTANT NOTICE

TO:CONVENTION DELEGATES
FROM: DEMOCRATIC STATE COMMITTEE

There is presently a case before the United States Supreme Court (Marchioro v. Chaney) which may directly affect the actions taken at today's convention.

In July of 1978, the Washington State Supreme Court ruled on a case involving a conflict between state law and party law. By a vote of 5-4, the court held that the provisions of state law prevailed over the

provisions of the state's Party Charter.

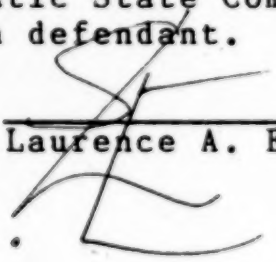
This decision has been appealed to the U.S. Supreme Court. The decenting[sic] opinion from the Washington State Supreme Court held that a Party's internal organization should be decided by the Party without regard to state law.

There is a distinct possibility that the decision of the Washington State Supreme Court will be reversed by the U.S. Supreme Court, and that a Party Charter will be held to supersede state law.

Please keep this in mind when voting on the Charter.

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing APPENDIX, VOL. 3, SUPPLEMENTAL, have been served, this 24th day of April, 1985, by United States mail, first class, postage prepaid, upon Thomas R. Kiley, Asst. Atty. General, One Ashburton Place, Room 2001, Boston, Mass., 02108, counsel of record for defendants/appellees Connolly and Bellotti, 3 copies for each defendant, and upon Keith Long, Esq., Herrick and Smith, 100 Federal Street, Boston, Mass. 02110, Counsel of record for defendants Atkins and the Democratic State Committee, 3 copies for each defendant.



Laurence A. Elgin